
Introduced by Senator Maddy

February 1, 1995

An act to amend Section 50003 of the Financial Code, relating to lending.

LEGISLATIVE COUNSEL'S DIGEST

SB 186, as introduced, Maddy. Residential mortgage lending: definitions.

The California Residential Mortgage Lending Act regulates the making of residential mortgage loans by specified entities.

This bill would modify the definitions of certain words and phrases used in the act.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 50003 of the Financial Code is
2 amended to read:

3 50003. (a) "Annual audit" means a certified audit of
4 the licensee's books, records, and systems of internal
5 control performed by an independent certified public
6 accountant in accordance with generally accepted
7 accounting principles and generally accepted auditing
8 standards.

9 (b) "Borrower" means the loan applicant.

10 (c) "Buy" includes exchange, offer to buy, or
11 solicitation to buy.



1 (d) “Commissioner” means the Commissioner of
2 Corporations.

3 ~~(d)~~

4 (e) “Control” means the possession, directly or
5 indirectly, of the power to direct, or cause the direction
6 of, the management and policies of a licensee under this
7 division, whether through voting or through the
8 ownership of voting power of an entity that possesses
9 voting power of the licensee, or otherwise. Control is
10 presumed to exist if a person, directly or indirectly, owns,
11 controls, or holds 10 percent or more of the voting power
12 of a licensee or of an entity that owns, controls, or holds,
13 with power to vote, 10 percent or more of the voting
14 power of a licensee. No person shall be deemed to control
15 a licensee solely by reason of his or her status as an officer
16 or director of the licensee.

17 ~~(e)~~

18 (f) “Engage in the business” means the dissemination
19 to the public, or any part of the public, by means of
20 written, printed, or electronic communication or any
21 communication by means of recorded telephone
22 messages or spoken on radio, television, or similar
23 communications media, of any information relating to the
24 making of residential mortgage loans, the servicing of
25 residential mortgage loans, or both. “Engage in the
26 business” also means, without limitation, making
27 residential mortgage loans or servicing residential
28 mortgage loans, or both.

29 ~~(f)~~

30 (g) “Exempt person” means any of the following:

31 (1) Any bank, trust company, or industrial loan
32 company doing business under the authority of or in
33 accordance with a license, certificate, or charter issued by
34 the United States or any state, district, territory, or
35 commonwealth of the United States.

36 (2) A federally chartered savings and loan association,
37 federal savings bank, or federal credit union that is
38 authorized to transact business in this state.



(3) A savings and loan association, savings bank, or credit union organized under the laws of this or any other state that is authorized to transact business in this state.

(4) A person engaged solely in commercial mortgage lending.

(5) A wholly owned service corporation of a savings and loan association or savings bank organized under the laws of this state or the wholly owned service corporation of a federally chartered savings and loan association or savings bank.

(6) Any person making residential mortgage loans with his, her, or its own funds for his, her, or its own investment without intent to resell more than eight residential loans in any one calendar year.

(7) An agency, or other instrumentality of the federal government, or state or municipal government.

(8) An employee or employer pension plan making loans only to its participants.

(9) A person acting in a fiduciary capacity conferred by the authority of a court.

(10) A real estate broker licensed under California law, when making, arranging, selling, or servicing a residential loan.

(11) A consumer finance lender or commercial finance lender licensed under California law, when acting under the authority of that license.

~~(g)~~

(h) “In this state” means any activity of a person relating to making or servicing a residential mortgage loan that originates from this state and is directed to persons outside this state, or that originates from outside this state and is directed to persons inside this state, or that originates inside this state and is directed to persons inside this state, or that leads to the formation of a contract and the offer or acceptance thereof is directed to a person in this state (whether from inside or outside this state and whether the offer was made inside or outside the state).

~~(h)~~

(i) “Institutional investor” means the following:

1 (1) The United States or any state, district, territory, or
2 commonwealth thereof, or any city, county, city and
3 county, public district, public authority, public
4 corporation, public entity, or political subdivision of a
5 state, district, territory, or commonwealth of the United
6 States, or any agency or other instrumentality of any one
7 or more of the foregoing, *including, but not limited to, the*
8 *Federal National Mortgage Association and the Federal*
9 *Home Loan Mortgage Association.*

10 (2) Any bank, trust company, savings bank or savings
11 and loan association, credit union, industrial bank or
12 industrial loan company, personal property broker,
13 consumer finance lender, commercial finance lender, or
14 insurance company, *or subsidiary or affiliate one of the*
15 *preceding entities*, doing business under the authority of
16 or in accordance with a license, certificate, or charter
17 issued by the United States or any state, district, territory,
18 or commonwealth of the United States.

19 (3) Trustees of pension, profit-sharing, or welfare
20 funds, if the pension, profit-sharing, or welfare fund has
21 a net worth of not less than fifteen million dollars
22 (\$15,000,000), except pension, profit-sharing, or welfare
23 funds of a licensee or its affiliate, self-employed individual
24 retirement plans, or individual retirement accounts.

25 (4) Any corporation with outstanding securities
26 registered under Section 12 of the Securities Exchange
27 Act of 1934 or any wholly owned subsidiary of that
28 corporation, provided the purchaser represents that it is
29 purchasing for its own account for investment and not
30 with a view to, or for sale in connection with, any
31 distribution of a promissory note.

32 (5) Any syndication or other combination of any of the
33 ~~foregoing~~ *entities specified in this subdivision* that ~~is~~ *are*
34 organized to purchase a promissory note.

35 (6) A person licensed to make residential mortgage
36 loans under this law.

37 (7) Any person who is licensed as a securities broker or
38 securities dealer under any law of this state, or of the
39 United States, or any employee, officer or agent of that
40 person, if that person is acting within the scope of

1 authority granted by that license in connection with a
2 transaction involving the offer, sale, purchase, or
3 exchange of a security representing an ownership
4 interest in a pool of promissory notes secured directly or
5 indirectly by liens on real property, if the transaction is
6 subject to any law of this state or the United States
7 regulating the offer or sale of securities.

8 (8) A licensed real estate broker selling the loan to an
9 institutional investor specified in paragraphs (1) to (7),
10 inclusive.

11 (9) *A trust or other entity established for the purpose*
12 *of issuing mortgage-backed securities, if the securities are*
13 *issued under a registered offering or are exempt from*
14 *registration under federal or state securities laws.*

15 (⊕)

16 (j) “Institutional lender” means the following:

17 (1) The United States or any state, district, territory, or
18 commonwealth thereof, or any city, county, city and
19 county, public district, public authority, public
20 corporation, public entity, or political subdivision of a
21 state, district, territory, or commonwealth of the United
22 States, or any agency or other instrumentality of any one
23 or more of the foregoing, *including, but not limited to, the*
24 *Federal National Mortgage Association and the Federal*
25 *Home Loan Mortgage Corporation.*

26 (2) Any bank, trust company, savings bank or savings
27 and loan association, credit union, or insurance company,
28 *or service or investment company that is wholly owned*
29 *by one of the preceding entities*, doing business under the
30 authority of and in accordance with a license, certificate,
31 or charter issued by the United States or any state, district,
32 territory, or commonwealth of the United States.

33 (3) Any corporation with outstanding securities
34 registered under Section 12 of the Securities Exchange
35 Act of 1934 or any wholly owned subsidiary of that
36 corporation.

37 (4) A person licensed to make residential mortgage
38 loans under this law.

39 (⊕)

1 (k) “Law” means the California Residential Mortgage
2 Lending Act.

3 ~~(k)~~

4 (l) “Lender” means a person that (1) is an approved
5 lender for the Federal Housing Administration, Veterans
6 Administration, Farmers Home Administration,
7 Government National Mortgage Association, Federal
8 National Mortgage Association, or Federal Home Loan
9 Mortgage Corporation, (2) directly makes residential
10 mortgage loans, and (3) makes the credit decision in the
11 loan transactions.

12 ~~(l)~~

13 (m) “Licensee” means, depending on the context, a
14 person licensed under either Chapter 2 (commencing
15 with Section 50120) or Chapter 3 (commencing with
16 Section 50130).

17 ~~(m)~~

18 (n) “Makes or making residential mortgage loans” or
19 “mortgage lending” means: (1) processing,
20 underwriting, or as a lender using or advancing one’s own
21 funds, or making a commitment to advance one’s own
22 funds, to a loan applicant for a residential mortgage loan;
23 *or (2) engaging as a principal in the business of buying*
24 *from, or selling to institutional lenders, institutional*
25 *investors, or exempt persons, residential mortgage loans*
26 *made or purchased under the authority of this license, by*
27 *using or advancing one’s own funds.*

28 ~~(n)~~

29 (o) “Mortgage loan,” “residential mortgage loan,” or
30 “home mortgage loan” means a federally regulated
31 mortgage loan as defined in Section 3500.2 of Title 24 of
32 the Code of Federal Regulations.

33 ~~(o)~~

34 (p) “Mortgage servicer” or “residential mortgage loan
35 servicer” means a person that (1) is an approved servicer
36 for the Federal Housing Administration, Veterans
37 Administration, Farmers Home Administration,
38 Government National Mortgage Association, Federal
39 National Mortgage Association, or Federal Home Loan



1 Mortgage Corporation, and (2) directly services or offers
2 to service mortgage loans.

3 ~~(p)~~

4 (q) “Net worth” has the meaning set forth in Section
5 50201.

6 ~~(q)~~

7 (r) “Own funds” means (1) cash, corporate capital, or
8 warehouse credit lines at commercial banks, savings
9 banks, savings and loan associations, or other sources that
10 are liability items on a lender’s financial statements,
11 whether secured or unsecured, or (2) a lender’s affiliate’s
12 cash, corporate capital, or warehouse credit lines at
13 commercial banks or other sources that are liability items
14 on the affiliate’s financial statements, whether secured or
15 unsecured. “Own funds” does not include funds provided
16 by a third party to fund a loan on condition that the third
17 party will subsequently purchase or accept an assignment
18 of that loan.

19 ~~(r)~~

20 (s) “Person” means a natural person, a sole
21 proprietorship, a corporation, a partnership, a limited
22 liability company, an association, a trust, a joint venture,
23 an unincorporated organization, a joint stock company, a
24 government or a political subdivision of a government,
25 and any other entity.

26 ~~(s)~~

27 (t) “Residential real property” or “residential real
28 estate” means real property located in this state that is
29 improved by a one-to-four family dwelling.

30 ~~(t)~~

31 (u) “Service” or “servicing” means receiving more
32 than three installment payments of principal, interest, or
33 other amounts placed in escrow, pursuant to the terms of
34 a mortgage loan.

35 (v) “Sell” includes exchange, offer to sell, or
36 solicitation to sell.

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